



Office of the Attorney General

State of Texas

September 10, 1998

DAN MORALES

ATTORNEY GENERAL

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-2163

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 117915.

The City of Houston Police Department (the "department") received a request for seven categories of information from an attorney concerning his client's complaint referenced by complaint number 98-0014. In response to the request, you submitted to this office for review a copy of the records which you assert are responsive. You indicate that the department "will make available to the requestor information responsive to requested item numbers five (5) and six (6)," the police blotter and the list of arrested persons during specified dates, respectively. However, you assert that the remaining categories of the request are protected from disclosure under section 552.108, and section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code. We have considered the claimed exceptions and have reviewed the information submitted.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 143 of the Local Government Code sets forth civil service rules for municipal fire and police departments. Subchapter G of that chapter sets forth provisions applicable to municipalities with a population of 1.5 million or more, including the City of Houston. *See* Open Records Decision No. 642 (1990).¹

Section 143.1214(b) of the Local Government Code requires "the department" to withhold from disclosure "an investigatory document that relates to a disciplinary action

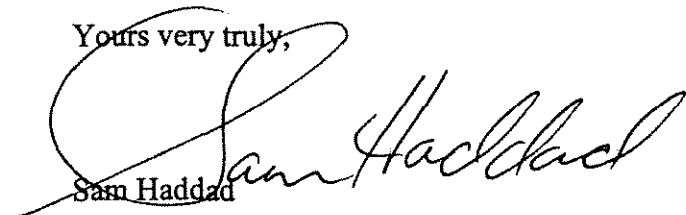
¹We also note that in Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Local Gov't Code § 143.089(a), (g).

against a . . . police officer that was overturned on appeal” and “any document in the possession of the department that relates to a charge of misconduct against a . . . police officer that the department did not sustain.” A review of the submitted information indicates that the records at issue pertain to a complaint which *did not* result in disciplinary action as contemplated by chapter 143 of the Local Government Code. Therefore, as these complaint charges were not sustained by the department, the department must withhold most of the requested information from disclosure under section 552.101 in conjunction with section 143.1214(b) of the Local Government Code. However, we note that Item 7 of the request asks for “[c]opies of the duty rosters for all officers and employees of the Houston Police Department,” assigned to the Mykawa substation on January 1 and 2, 1998. We do not believe the information responsive to Item 7 of the request to be protected from disclosure under either section 143.1214(b) or section 552.101 of the Government Code. *See generally* Open Records Decision Nos. 470 at 4 (1987), 444 (1986), 423 at 2 (1984) (scope of public employee privacy is narrow).

Since you also assert that the responsive information should be excepted under section 552.108(a)(2), we next consider whether Item 7 of the request may be withheld under this exception. You claim that the responsive information “pertains to an investigation into criminal activity . . . [that] was presented to the District Attorney’s office,” which declined to accept criminal charges. Section 552.108(a)(2) provides that information is excepted from disclosure if “it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” In this instance, you have not shown nor is it apparent how the requested duty roster information deals with the detection, investigation, or prosecution of crime. Accordingly, we do not believe that the requested information is excepted from required public disclosure under section 552.108. *See* Gov’t Code § 552.022(2); Open Records Decision Nos. 139 (1976) (names, sex, ethnicity, salaries, titles, and dates of employment for public employees are specifically made public), 132 (1976). Therefore, the information responsive to Item 7 of the request must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 117915

Enclosures: Submitted information

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(w/o enclosures)